



City of Homer

www.cityofhomer-ak.gov

Port and Harbor

4311 Freight Dock Road
Homer, AK 99603

port@cityofhomer-ak.gov

(p) 907-235-3160

(f) 907-235-3152

Memorandum 20-059

TO: HOMER CITY COUNCIL

THROUGH: MARVIN YODER, INTERIM CITY MANGER

FROM: BRYAN HAWKINS, PORT DIRECTOR/HARBORMASTER

DATE: MAY 7, 2020

SUBJECT: ASSIGNMENT OF ICICLE SEAFOODS LEASE TO OCEAN BEAUTY ICICLE, LLC.

In April of 2020 Icicle Seafoods and Ocean Beauty Seafoods contacted the City, as required per Icicle Seafood's lease, to advise of the pending merger of the two companies into Ocean Beauty Icicle, LLC (OBI). This merger would require a lease assignment from Icicle Seafoods to OBI through resolution since there is a change in ownership of more than 25% (per Icicle's Lease Section 8.02 and HCC 18.08.160). Icicle has operated in the City in some capacity since the construction of Homer's Harbor in the 1970's.

Items of Note:

- The lease was updated to the new template in 2016 bringing the language and terms up to current policies fairly recently.
- They are asking for no extension of term nor are they requesting a change in use of purpose or any other conditions of the current lease.
- Current Terms of the lease:
 - term ends December 31, 2036 with two(2) five year extensions possible
 - base rent = \$69,876.96 per annum
 - square footage /lots- Lot 41 = 64,905 square feet & Lot 42 =64,066 square feet ; total = 128,971 square feet
 - purpose- Seafood processing plant, and operations related directly thereto (no new improvements scheduled or planned to existing structures per lease)
- New ownership of the merged Ocean Beauty Icicle LLC is listed at 50% Icicle Seafoods, 50% Ocean Beauty Seafoods

One of the conditions of the lease assignment is receiving financial capability or backing of the applicant including items such as credit history and assets that will support the business. The City has on hand sufficient financial information provided by Icicle however OBI, LLC has not provided its own financial portfolio. The merger between Icicle and Ocean Beauty is set to complete at the end of May 2020. To meet the financial capability requirement of the assignment, an explanation for how the assets of each party will be incorporated into the LLC and an agreement to provide sufficient financial

information to satisfy the requirements of Homer City Code Chapter 18.08 and our City lease application will be submitted to the City Manager after the merger is complete (please see attached letter for detail). Council's approval of the lease assignment will be contingent upon OBI, LLC providing their financial information when available to the City Manager for review before completion of the lease transfer documents. Per HCC 18.08.070 (g), the City Manager may rescind the notice to award at any time prior to the execution of a lease if the proposer can no longer meet the terms of the proposal.

RECOMMENDATION

Port and Harbor staff recommend assigning Icicle Seafood's current 20-year lease with two five year options for Lot 41 & 42 to OBI, LLC and authorizing the City Manager to move forward with executing the appropriate documents with the condition that execution of documents will be contingent on, and not occur until, OBI provides to the City Manager financial documentation for the newly merged LLC that complies/satisfies HCC 18.08.060 and Homer's Lease Application Section 8 Financials.

Fiscal Notes:

Current Icicle Seafoods Annual base Rent: \$69,876.96, Rates are adjusted annual per the Consumer Price Index and 5 year appraisals

Attachments: Letter to City Manager Regarding Merger
Ocean Beauty Icicle Submitted Lease Application
Assignment and Assumption of Lease Document between Icicle and Ocean Beauty-
Draft
Icicle Seafood Inc.'s Lease



May 6, 2020

VIA EMAIL

Mr. Marvin Yoder
Acting City Manager
Homer City Hall
491 Pioneer Avenue
Homer, AK 99603
ehollis@ci.homer.ak.us

Re: Assignment of Tenant's Interest in Lease of Lots 41 & 42, Homer Spit Sub. Amended

Dear Mr. Yoder,

Attached please find our application to assign the Ground Lease and Security Agreement, dated January 24, 2017, as amended, by and between the City of Homer, Alaska and Icicle Seafoods, Inc. (the "Lease") for the real property legally described on page 3 of this letter. We seek to assign the Lease to OBI Seafoods, LLC.

Icicle Seafoods, Inc. and Ocean Beauty Seafoods LLC are contributing their respective wild salmon processing businesses into a new Alaska limited liability company, OBI Seafoods, LLC ("OBI"). We anticipate the transaction will close in mid-to-late May. OBI will be 50% owned by each party. Both parties have liens on much of their real property and infrastructure to secure existing loans, so those items will be leased to OBI until that third-party debt is paid off and the encumbrances are removed, at which point they will be contributed to OBI. Both parties will, however, contribute their working capital assets to OBI now. These working capital assets will serve as collateral for a new, syndicated financing facility that will be available at the closing to pay OBI's obligations. Financial information sufficient to satisfy the requirements of Homer Code of Ordinances, Chapter 18.08, will be submitted to the City Manager after closing.

OBI's operating agreement will also be signed at closing. Accordingly, OBI is asking the Homer City Council to approve this assignment to be effective on OBI's provision to the City Manager of the OBI operating agreement, OBI financial statements, and proof of insurance. The form of assignment is enclosed.

City of Homer (Lease of Lots 41 & 42 Homer Spit Sub Amended)

May 6, 2020

Page 2 of 3

We look forward to working with you to answer any questions you may have.

Sincerely,

ICICLE SEAFOODS, INC.

A handwritten signature in brown ink that reads "Ken 'Duff' Hoyt". The signature is written in a cursive, slightly slanted style.

Ken "Duff" Hoyt
Manager, Cook Inlet Buying Station

Enclosures: Legal Description
 Application for Assignment
 Form of Assignment

cc: Tony Ross, Chief Financial Officer OBI Seafoods, LLC (via email)

LEGAL DESCRIPTION

Lot 41, T 7S R 13W SEC 1 Seward Meridian HM 0890034 HOMER SPIT SUB AMENDED ADL 18009, as depicted on the document described as Homer Spit Amended, a Resubdivision, recorded as Plat 89-34, in the Homer Recording District, on September 21, 1989, also known as Kenai Peninsula Borough Tax Parcel No. 181-034-19;

Lot 42, T 7S R 13W SEC 1 Seward Meridian HM 0890034 HOMER SPIT AMENDED ADL 18009 LOT 42 (ADL 18009), as depicted on the document described as Homer Spit Amended, a Resubdivision, recorded as Plat 89-34, in the Homer Recording District, on September 21, 1989, also known as Kenai Peninsula Borough tax Parcel No. 181-034-18.



Lease Application/Assignment Form

Directions:

1. Please submit this application form to the City Manager’s Office, 491 Pioneer Avenue, Homer, AK, 99603.
2. Please answer all questions on this form, or put “N/A” in the space if it is non-applicable.
3. Please include all applicable fees in the form of a check, made payable to the City of Homer.

Applicant Name:	OBI Seafoods, LLC, proposed Assignee of Ground Lease and Security Agreement between City of Homer and Icicle Seafoods, Inc., dated January 24, 2017, as amended by the First Amendment to Lease Agreement, dated March 1, 2018 ("Existing Lease").	
Business Name:	OBI Seafoods, LLC	
Social Security Number:	EIN: 84-1944330	
Email Address:	Tony Ross, Chief Financial Officer tony.ross@OceanBeauty.com	Duff Hoyt, Manager, Cook Inlet Buying Station DuffH@icicleseafoods.com
Mailing Address	P.O. Box 70739	
City, State, ZIP code:	Seattle, WA 98127	
Business Telephone No.	206-285-6800	
Representative’s Name:	Icicle Seafoods, Inc., current existing tenant and proposed Assignor of Existing Lease Duff Hoyt, Manager, Cook Inlet Buying Station, DuffH@icicleseafoods.com	
Mailing Address:	P.O. Box 79003	
City, State, ZIP code:	Seattle, WA 98119	
Business Telephone No.	206-282-0988	
Property Location:	842 Fish Dock Road, Homer, Alaska (Homer Spit)	
Legal Description:	See Exhibit A attached hereto	
Type of Business to be placed on property:	Same business and uses as authorized under Existing Lease.	
Duration of Lease requested:	Termination effective November 31, 2036, per Existing Lease	
Options to re-new:	2 (two) additional, consecutive 5 (five) year periods, per Existing Lease	

**The following materials must be submitted when applying for a lease of
City of Homer real property**

1.	Plot Plan N/A	<u>A drawing of the proposed leased property showing:</u> <input type="checkbox"/> Size of lot - dimensions and total square footage (to scale) <input type="checkbox"/> Placement and size of buildings, storage units, miscellaneous structures planned (to scale). <input type="checkbox"/> Water and sewer lines – location of septic tanks, if needed. <input type="checkbox"/> Parking spaces – numbered on the drawing with a total number indicated																				
2.	Development Plan N/A	<input type="checkbox"/> <u>List the time schedule from project initiation to project completion, including major project milestones.</u> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left; width: 50%;">Dates</th> <th style="text-align: left; width: 50%;">Tasks</th> </tr> </thead> <tbody> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> </tbody> </table> For each building, indicate: <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left; width: 60%;">Building Use</th> <th style="text-align: left; width: 40%;">Dimensions and square footage</th> </tr> </thead> <tbody> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> </tbody> </table>	Dates	Tasks	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	Building Use	Dimensions and square footage	_____	_____	_____	_____	_____	_____
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Building Use	Dimensions and square footage																					
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_____	_____																					
3.	Insurance Proof of insurance is forthcoming.	<input type="checkbox"/> Attach a statement of proof of insurability of lessee for a minimum liability insurance for combined single limits of \$1,000,000 showing the City of Homer as co-insured. Additional insurance limits may be required due to the nature of the business, lease or exposure. Environmental insurance may be required. If subleases are involved, include appropriate certificates of insurance.																				
4.	Subleases See Exhibit B attached hereto	<input checked="" type="checkbox"/> Please indicate and provide a detailed explanation of any plans that you may have for subleasing the property. The City of Homer will generally require payment of 10% of proceeds paid Lessee by subtenants.																				
5.	Health Requirements N/A	<input type="checkbox"/> Attach a statement documenting that the plans for the proposed waste disposal system, and for any other necessary health requirements, have been submitted to the State Department of Environmental Conservation for approval. Granting of this lease shall be contingent upon the lessee obtaining all necessary approvals from the State DEC.																				

<p>9.</p>	<p>Partnership Statement</p> <p>N/A</p>	<p><input type="checkbox"/> <u>If the applicant is a partnership, please provide the following:</u></p> <p>Date of organization: _____</p> <p>Type: <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership</p> <p>Statement of Partnership Recorded? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Where _____ When _____</p> <p>Has partnership done business in Alaska? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Where _____ When _____</p> <p>Name, address, and partnership share. If partner is a corporation, please complete corporation statement.</p> <p><i>Please attach a copy of your partnership agreement.</i></p>																								
<p>10.</p>	<p>Corporation Statement</p> <p>Limited Liability Company Statement</p>	<p><input checked="" type="checkbox"/> <u>If the applicant is a corporation, please provide the following:</u></p> <p>Organization Limited Liability Company</p> <p>Date of Incorporation: May 21, 2019</p> <p>Organization Alaska</p> <p>State of Incorporation: Alaska</p> <p>Organization Limited Liability Company</p> <p>Is the Corporation authorized to do business in Alaska?</p> <p><input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Is so, as of what Date? May 21, 2019</p> <p>Corporation is held? <input type="checkbox"/> Publicly <input checked="" type="checkbox"/> Privately If publicly held, how and where is the stock traded?</p> <p>_____</p> <p>Officers & Principal Stockholders [10%+]:</p> <table border="1"> <thead> <tr> <th><u>Name</u></th> <th><u>Title</u></th> <th><u>Address</u></th> <th><u>Share</u></th> </tr> </thead> <tbody> <tr> <td colspan="4">See Supplement to Section 10 attached hereto</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p>Organization Operating Agreement</p> <p><input checked="" type="checkbox"/> Please furnish a copy of Articles of Incorporation and By-laws.</p> <p>Please furnish name and title of officer authorized by Articles and/or By-laws to execute contracts and other corporate commitments.</p> <table border="1"> <thead> <tr> <th><u>Name</u></th> <th><u>Title</u></th> </tr> </thead> <tbody> <tr> <td colspan="2">See Supplement to Section 10 attached hereto</td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	<u>Name</u>	<u>Title</u>	<u>Address</u>	<u>Share</u>	See Supplement to Section 10 attached hereto												<u>Name</u>	<u>Title</u>	See Supplement to Section 10 attached hereto					
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11. Applicant References

Please list four persons or firms with whom the Applicant or its owners have conducted business transactions with during the past three years. Two references named shall have knowledge of your financial management history, of which at least one must be your principal financial institution. Two of the references must have knowledge of your business expertise.

Name: Totem Ocean Trailer Express
Firm: _____
Title: _____
Address: 1100 Olive Way, Seattle, WA 98124
Telephone: 206-628-4343
Nature of business association with Applicant: Vendor

Name: Seattle Marine Supply
Firm: _____
Title: _____
Address: 2121 W. Commodore Way, Seattle, WA 98119
Telephone: 206-285-5010
Nature of business association with Applicant: Vendor

Name: Frontier Packaging Inc.
Firm: _____
Title: _____
Address: 1201 Andover Park East, Tukwila, WA 98188
Telephone: 206-575-7772
Nature of business association with Applicant: Vendor

Name: Delta Western
Firm: _____
Title: _____
Address: 2700 W. Commodore Way #301, Seattle, WA 98199
Telephone: 206-270-9609
Nature of business association with Applicant: Vendor

I hereby certify that the above information is true and correct to the best of my knowledge.

Signature:

Ken "Duff" Hoyt

Date:

May 6, 2020

State of Alaska
Department of Commerce, Community, and Economic Development
Corporations, Business, and Professional Licensing

Certificate of Organization

The undersigned, as Commissioner of Commerce, Community, and Economic Development of the State of Alaska, hereby certifies that a duly signed and verified filing pursuant to the provisions of Alaska Statutes has been received in this office and has been found to conform to law.

ACCORDINGLY, the undersigned, as Commissioner of Commerce, Community, and Economic Development, and by virtue of the authority vested in me by law, hereby issues this certificate to

OBI Seafoods, LLC



IN TESTIMONY WHEREOF, I execute the certificate and affix the Great Seal of the State of Alaska effective **May 21, 2019**.

A handwritten signature in cursive script that reads "Julie Anderson".

Julie Anderson
Commissioner



THE STATE

of **ALASKA**

Department of Commerce, Community, and Economic Development
Division of Corporations, Business, and Professional Licensing
PO Box 110806, Juneau, AK 99811-0806
(907) 465-2550 • Email: corporations@alaska.gov
Website: Corporations.Alaska.gov

FOR DIVISION USE ONLY

Articles of Organization

Domestic Limited Liability Company

Web-5/21/2019 4:07:53 PM

1 - Entity Name

Legal Name: OBI Seafoods, LLC

2 - Purpose

Producing and selling fresh and frozen seafood.

3 - NAICS Code

311712 - FRESH AND FROZEN SEAFOOD PROCESSING

4 - Registered Agent

Name: C T Corporation System

Mailing Address: 9360 Glacier Highway, Suite 202, Juneau, AK 99801

Physical Address: 9360 Glacier Highway, Suite 202, Juneau, AK 99801

5 - Entity Addresses

Mailing Address: P.O. Box 79003, Seattle, WA 98119

Physical Address: 4019 21st Avenue W, Seattle, WA 98199

6 - Management

The limited liability company is managed by a manager.

7 - Officials

Name	Address	% Owned	Titles
Vanessa Norman			Organizer

Name of person completing this online application

This form is for use by the named entity only. Only persons who are authorized by the above Official(s) of the named entity may make changes to it. If you proceed to make changes to this form or any information on it, you will be certifying under penalty of perjury that you are authorized to make those changes, and that everything on the form is true and correct. In addition, persons who file documents with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor. Continuation means you have read this and understand it.

Name: Vanessa Norman

ASSIGNMENT AND ASSUMPTION OF LEASE

Homer, Alaska

(City of Homer – Lots 41 & 42, Homer Spit Sub. Amended ADL 18009)

This Assignment and Assumption of Lease (“Assignment”) is made and entered into as of the Contribution Date (as such term is defined in the Contribution Agreement defined below), and is by and between Icicle Seafoods, Inc., an Alaska corporation (hereinafter “Icicle”) and OBI Seafoods, LLC, an Alaska limited liability company (hereinafter “Assignee”) and consented to by the City of Homer (hereinafter “Lessor”).

RECITALS

A. Icicle and Ocean Beauty Seafoods LLC, an Alaska limited liability company (hereinafter “OBS”) formed Assignee on May 21, 2019 and have executed an Operating Agreement for Assignee (the “Operating Agreement”).

B. Icicle and OBS are the sole members of OBS, and each of Icicle and OBS own fifty percent (50%) of the issued and outstanding membership interests of Assignee.

C. Icicle, OBS and Assignee are parties to that certain Contribution Agreement dated as of substantially even date (the “Contribution Agreement”) pursuant to which Icicle and OBS are, *inter alia*, contributing certain assets to Assignee and leasing to Assignee certain real property owned by Icicle, OBS or a subsidiary of Icicle.

D. The Contribution Agreement also requires Icicle to assign and/or sublease its interest under various leases and agreements to Assignee, and Section 18.08.140.e. of the Code of Ordinances of the City of Homer, Alaska (the “Homer Code”) prohibits the sublease of substantially all of a leasehold interest.

E. Icicle and Lessor are parties to that certain Ground Lease and Security Agreement dated January 24, 2017 as amended by that certain First Amendment to Lease Agreement effective as of March 1, 2018 (collectively, the “Lease”), copies of which are attached hereto as Exhibit A, the term of which expires on December 31, 2036 unless extended as set forth in Section 3.02 of the Lease.

F. Section 8.01 of the Lease (and Section 18.08.160.a. of the Homer Code) requires Lessor to provide its prior written consent to any assignment of the Lease and further provides that Icicle shall continue to remain liable and responsible for the due performance of all of the terms, covenants and conditions of the Lease notwithstanding such assignment.

ASSIGNMENT AND ASSUMPTION

For and in consideration of the consummation of the transactions specified in the Contribution Agreement and in order to consummate such transactions as required by the Contribution Agreement, Icicle and Assignee enter into and execute this Assignment.

1. Icicle hereby transfers, grants, conveys and assigns to Assignee all of Icicle's right, title and interest in, to and under the Lease.

2. Assignee hereby accepts the assignment of the Lease and shall be entitled to all of the rights and benefits accruing to the tenant thereunder arising, and hereby fully and forever assumes and agrees to perform any and all of Icicle's obligations, duties, undertakings and liabilities of any kind whatsoever arising under the Lease on or after the Contribution Date, as fully and completely as if Assignee was the originally named tenant thereunder.

3. Pursuant to the provisions of the Lease, Icicle shall remain liable and responsible to the Lessor under the Lease at all times; provided that nothing in the foregoing statement prohibits Icicle from taking action against Assignee to recover any damages incurred by Icicle after the Contribution Agreement arising from or in any way related to Assignee's nonperformance under the Lease.

4. A copy of the Lessor's consent to this assignment is attached hereto as Exhibit B.

5. This Assignment may be terminated by the mutual agreement of the parties at any time provided such termination is accomplished in compliance with the applicable requirements of the Homer Code in effect at such time. In addition, this Assignment may be terminated at any time by Icicle upon the occurrence of any of the following events: (a) Lessor declares Assignee or Icicle to be in default under the Lease, (b) Assignee fails to make any payment due under the Lease to the party entitled to receive such payment under the terms hereof, (c) the expiration or sooner termination of the Lease without the renewal thereof by Icicle and the Lessor, (d) the dissolution of Assignee, (e) the transfer of Icicle's interest in Assignee, or (f) the occurrence of an event described in the Contribution Agreement or Operating Agreement as one that results in the termination of this or any other real property lease, assignment or sublease between Icicle and Assignee. Upon the termination of this Assignment for reasons other than (c), above, Icicle shall, upon receipt of the City of Homer's approval of the re-assignment as required under the Homer Code, be obligated to perform all duties and obligations, and shall have all the rights as the tenant, under the Lease.

6. This Assignment shall inure to the benefit of, and be binding upon, the respective legal representatives, successors, and assigns of the parties hereto. Capitalized terms not defined herein shall have the means set forth in the Contribution Agreement.

[signatures on following page]

ICICLE SEAFOODS, INC.

OBI SEAFOODS, LLC

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
Copy of Lease & Amendment

[see following]

EXHIBIT B
Lessor's Consent

[see following]

GROUND LEASE AND SECURITY AGREEMENT

BETWEEN

CITY OF HOMER, ALASKA

AND

ICICLE SEAFOODS, INC.

Dated January 24, 2017

GROUND LEASE AND SECURITY AGREEMENT

GROUND LEASE AND SECURITY AGREEMENT ("Lease") dated as of January ____, 2017, between the CITY OF HOMER, an Alaska municipal corporation ("Landlord"), whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and ICICLE SEAFOODS INC., an Alaska corporation, with its principal offices in Seattle, Washington ("Tenant"), whose address is 4019 21st Ave. West, Seattle, Washington, 98199.

Attached as Exhibit A is a certificate of good standing of Tenant, issued by the State of Alaska, and a statement of ownership of Tenant by its parent corporation. Attached as Exhibit B is a true and correct copy of two resolutions, one of Tenant and one of Tenant's parent corporation, authorizing Tenant to enter into this Lease and authorizing the undersigned individual(s) or officer(s) to execute the Lease on behalf of Tenant.

RECITALS

WHEREAS, Landlord owns certain properties having a strategic location near the waterfront and marine-related public infrastructure; and

WHEREAS, it is the policy of Landlord to retain ownership of these properties, and to make them available for leasing, in order to encourage growth in targeted economic sectors, to ensure that Landlord receives the maximum benefit from a large investment in public infrastructure, and to provide land for businesses that require close proximity to the waterfront or infrastructure to operate efficiently and profitably; and

WHEREAS, Landlord has accepted Tenant's proposal to lease the property leased herein, because Tenant's proposed use of the property should further Landlord's goals, and Tenant's proposal to lease and prior development of the property is a material inducement to Landlord leasing the property to Tenant; and

WHEREAS, Tenant has made its own determination that its use of the property will be economically feasible, and that the term for which it is leasing the property will be sufficient to amortize Tenant's investment in the leased property under Tenant's proposal.

NOW, THEREFORE, in consideration of the matters recited above, and the mutual covenants herein, the parties agree as follows:

ARTICLE 1. DEFINITIONS AND ATTACHMENTS

1.01 Definitions. As used herein, the term:

(a) "Annual Rent Adjustment" and "Annual Rent Adjustment Date" are defined in Section 4.02(b).

(b) "Base Rent" is defined in Section 4.01.

(c) "Complete" and "Completion" mean, with regard to an improvement, that construction of the improvement is finished and the improvement is fully operational and ready for occupancy

or use for its intended purpose, including without limitation the issuance of any applicable certificate of occupancy and other applicable permits, licenses, certificates or inspection reports necessary to the improvement's legally authorized use.

(d) "Council" means the City Council of the City of Homer, Alaska.

(e) "Default Rate" means an annual rate of interest equal to the lesser of (i) the maximum rate of interest for which Tenant may lawfully contract in Alaska, or (ii) ten and one-half percent (10.5%).

(f) "Environmental Laws" means all local, state, and federal laws, ordinances, regulations, and orders related to environmental protection; or the use, storage, generation, production, treatment, emission, discharge, remediation, removal, disposal, or transport of any Hazardous Substance.

(g) "Excusable Delay" means delay due to strikes, acts of God, inability to obtain labor or materials, orders of any governmental authority having jurisdiction, removal of Hazardous Materials discovered at any time after the commencement of the Term, enemy action, civil commotion, fire, unusual inclement weather, unavoidable casualty or similar causes beyond the reasonable control of Tenant.

(h) "Extended Term" is defined in Section 3.02.

(i) "Five Year Rent Adjustment Date" is defined in Section 4.02(a).

(j) "Hazardous Substance" means any substance or material defined or designated as hazardous or toxic waste; hazardous or toxic material; hazardous, toxic, or radioactive substance; or other similar term by any federal, state, or local statute, regulation, or ordinance or common law presently in effect or that may be promulgated in the future as such statutes, regulations, and ordinances may be amended from time to time.

(k) "Landlord" means the City of Homer, Alaska.

(l) "Lease Policy" means the City of Homer Property Management Policy and Procedures, as adopted and amended from time to time by Council resolution.

(m) "Leasehold Mortgage" is defined in Section 13.01.

(n) "Property" is defined in Section 2.01.

(o) "Qualified Mortgagee" is defined in Section 13.03.

(p) "Tenant" means ICICLE SEAFOODS, INC.

(q) "Term" is defined in Section 3.01.

1.02 Attachments. The following documents are attached hereto, and such documents, as well as all drawings and documents prepared pursuant thereto, shall be deemed to be a part hereof:

Exhibit "A" Schedule of Ownership and Tenant's Certificate of Good Standing

Exhibit "B" Conformed Copy of Resolution Authorizing Lease and Authorizing Signers to Sign Lease Agreement on Behalf of Tenant

Exhibit "C" Legal Description of Property

Exhibit "D" Certificates of Insurance

Exhibit "E" Permission to Obtain Insurance Policies

ARTICLE 2. THE PROPERTY

2.01 Lease of Property. Subject to the terms and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the following described property ("Property"):

Lot 41, T 7S R 13W SEC 1 Seward Meridian HM 0890034
HOMER SPIT SUB AMENDED ADL 18009, Homer Recording
District, State of Alaska, as depicted on Exhibit C, containing
64,905 square feet, more or less, also known as Kenai Peninsula
Borough Tax Parcel No. 181-034-19;

subject, however, to reservations, restrictions, easements and encumbrances of record, and to encroachments that may be revealed by an inspection of the Property.

2.02 Quiet Enjoyment. Landlord covenants that Tenant, upon paying the rent and other charges and performing its other obligations under this Lease shall have quiet enjoyment of the Property during the Term without hindrance or interference by Landlord or by any person claiming an interest in the Property through Landlord.

2.03 Property Accepted "As Is." Tenant has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the Property "AS IS." Landlord, its agents and employees make no warranties, expressed or implied, concerning the condition of the Property, including without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions, including the presence of any Hazardous Substance.

2.04 Property Accepted "As Is;" Exception for Hazardous Substances.

(a) Tenant has inspected the Property, has made its own determination as to the suitability of the Property for Tenant's intended use, and accepts the Property "AS IS." Landlord, its agents and employees make no warranties, expressed or implied, concerning the condition of the

Property, including without limitation the habitability or fitness of the Property for any particular purpose, including those uses authorized by this Lease, or subsurface and soil conditions.

2.05 No Subsurface Rights. This Lease confers no mineral rights or rights with regard to the subsurface of the Property below the level necessary for the uses of the Property permitted in this Lease.

ARTICLE 3. TERM

3.01 Lease Term. The term of this Lease is 20 years, commencing on January 1, 2017, and ending on December 31, 2036 ("Term").

3.02 Options to Extend Lease Term.

(a) Tenant has the option to extend the Term for 2 (two) additional, consecutive 5 (five) year periods (each an "Extended Term"), provided that:

(1) Tenant gives Landlord written notice of its exercise of the option not more than one year and not less than 120 days before the last day of the Term or current Extended Term, as the case may be;

(2) At the time Tenant exercises the option, and at all times thereafter until the Extended Term commences, Tenant is not materially in default of any term or condition of this Lease and has not made an assignment or subletting of this Lease or any interest in the Property except as permitted under this Lease; and

(3) Tenant may exercise no more than one option to extend the Term during the Term or any Extended Term.

(b) Tenant's failure to exercise an option to extend the Term in strict compliance with all the requirements in Section 3.02(a) renders that option and all options as to subsequent Extended Terms null and void.

3.03 Lease Renewal.

(a) Tenant represents and warrants that it has determined that the duration of the Term, plus any available Extended Terms, will be sufficient for Tenant to amortize any investment that it makes or has made in connection with this Lease, including without limitation any investment in leasehold improvements. Tenant acknowledges that it has no right of any kind to continue using or occupying the Property after the expiration or earlier termination of the Term or the final Extended Term, including without limitation any option to renew this Lease, or any option to extend the Term other than as provided in Section 3.02.

(b) Not less than 12 months before the expiration of the Term or the final Extended Term, Tenant may apply to Landlord for a renewal of this Lease in the manner that a person then would apply for a new lease of the Property. In response to a timely application, the Council will determine whether to renew this Lease, and the term of any renewal, in its sole discretion. The Council is under no obligation to renew this Lease, or to renew this Lease for the term that Tenant

requests. If the Council does not grant a timely application to renew this Lease, Tenant shall prepare to surrender possession of the Property as required by Section 3.04, and dispose of improvements on the Property as required by Section 6.06.

3.04 Surrender of Possession. Upon the expiration or earlier termination of the Term or the final Extended Term, Tenant shall promptly and peaceably surrender the Property, clean, free of debris, and in as good order and condition as at the commencement of the Term, ordinary wear and tear excepted, and shall remove from the Property all personal property belonging to Tenant and located on the Property at the expiration or termination of the Term. If Tenant fails to surrender the Property in the required condition, Landlord may restore the Property to such condition and Tenant shall pay the cost thereof, plus interest at the Default Rate, on demand. Section 6.06 governs the disposition of improvements on the Property at the expiration or earlier termination of the Term or final Extended Term.

3.05 Holding Over. Tenant's continued possession of the Property after the expiration or earlier termination of the Term or final Extended Term will not renew or extend this Lease. In the absence of any agreement renewing or extending this Lease, Tenant's continued possession of the Property after the end of the Term will be a tenancy from month to month, terminable upon thirty (30) days written notice by either party at any time, at a monthly rental equal to 150% of the monthly Base Rent in effect at the end of the Term, subject to all other terms of this Lease. For good cause, Landlord may waive all or part of the increase in Base Rent during the holdover period.

ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES

4.01 Base Rent. Tenant shall pay to Landlord an initial annual rent of \$35,070.00 ("Base Rent"). Base Rent is payable monthly in advance in installments of \$2,922.50, plus tax, on February 1, 2017, and on the first day of each month thereafter, at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. All Base Rent shall be paid without prior demand or notice and without deduction or offset. Base Rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02.

4.02 Rent Adjustments.

(a) **Five-Year Appraised Rent Adjustments.** Commencing January 1, 2022, and in every fifth year thereafter, Landlord will obtain an appraisal by a qualified real estate appraiser of the fair rental value of the Property as if privately owned in fee simple, excluding the value of improvements (other than utilities) made by tenants. The appraisal may be performed as part of an appraisal of other properties of Landlord that are comparable in location and value. The Base Rent will be adjusted effective the anniversary date of the lease in the year of each appraisal (each such date is a "Five Year Rent Adjustment Date") to an amount equal to the greater of (i) the area of the Property in square feet, multiplied by the fair rental value per square foot determined by the appraisal, and (ii) the adjusted Base Rent in effect immediately before the Five Year Rent Adjustment Date. The rent adjusted on a Five Year Rent Adjustment Date thereafter shall be the Base Rent.

(b) Annual Rent Adjustments. In addition to the rent adjustments under Section 4.02(a), the Base Rent also shall be adjusted annually (the "Annual Rent Adjustment") effective January 1, 2018, and on each year thereafter, excluding each Five Year Rent Adjustment Date (each such date being an "Annual Rent Adjustment Date"), by the increase or decrease, if any, for the previous year in the cost of living as stated in the Consumer Price Index, All Urban Consumers, Anchorage, Alaska Area, All Items 2000 – present = 100 ("CPI-U"), as published by the United States Department of Labor, Bureau of Labor Statistics most recently before the Annual Rent Adjustment Date. If the CPI-U is revised or ceases to be published, Landlord instead shall use such revised or other index, with whatever adjustment in its application is necessary, to most nearly approximate in Landlord's judgment the CPI-U for the relevant period.

4.03 Taxes, Assessments and Other Governmental Charges. Tenant shall pay prior to delinquency all taxes, installments of assessments that are payable in installments and other governmental charges lawfully levied or assessed upon or with respect to the Property, and improvements on the Property and personal property that is situated on the Property; provided that Tenant may contest in good faith any such tax, assessment or other governmental charge without subjecting the Property to lien or forfeiture. If an assessment on the Property that is not payable in installments becomes due during the Term or an Extended Term, Tenant shall be obligated to pay the fraction of the assessment that is determined by dividing the number of years remaining in the Term or Extended Term by ten (10). If this Lease subsequently is extended or renewed, the part of the assessment that Tenant shall pay shall be determined by adding the extended or renewal term to the number of years remaining in the Term when the assessment became due. If the Term commences or expires during a tax year, the taxes or assessments payable for that year will be prorated between Landlord and Tenant. Tenant shall exhibit to Landlord, on demand, receipts evidencing payment of all such taxes, assessments and other governmental charges.

4.04 Utility Charges. Tenant shall pay all charges for utility and other services provided to or used on the Property, including without limitation gas, heating oil, electric, water, sewer, heat, snow removal and refuse removal. Tenant shall be solely responsible for the cost of utility connections.

4.05 Tenant to Pay for City Services. Tenant shall pay for all services provided by the City of Homer that are related to the use or operation of the Property, improvements thereon and Tenant's activities thereon. Without limiting the generality of the preceding sentence, Tenant shall pay for wharfage, crane use, ice, and other Port and Harbor services at the rates established by the City of Homer from time to time. Tenant shall provide the City of Homer with the information necessary to determine wharfage, crane use, ice and other Port and Harbor service charges, keep written records of such information for not less than two years after such charges are due, and, upon request, make such records available to the City of Homer for inspection and audit.

4.06 Additional Rent and Landlord's Right to Cure Tenant's Default. All costs or expenses that Tenant is required to pay under this Lease at Landlord's election will be treated as additional rent, and Landlord may exercise all rights and remedies provided in this Lease in the event of nonpayment. If Tenant defaults in making any payment required of Tenant or defaults in performing any term, covenant or condition of this Lease that involves the expenditure of money by Tenant, Landlord may, but is not obligated to, make such payment or expenditure on behalf of Tenant, and any and all sums so expended by Landlord, with interest thereon at the Default Rate

from the date of expenditure until repaid, will be additional rent and shall be repaid by Tenant to Landlord on demand, provided, however, that such payment or expenditure by Landlord will not waive Tenant's default, or affect any of Landlord's remedies for such default.

4.07 Security Deposit. Upon execution of this Lease, Tenant shall deposit with Landlord an amount equal to 10% of the annual Base Rent (\$3,507) as security for Tenant's performance of its obligations under this Lease. Landlord will hold the security deposit, and may commingle it with other funds of Landlord. If Tenant defaults in performing any obligation under this Lease, including without limitation the payment of rent, Landlord may apply all or any portion of the security deposit to the payment of any sum in default or any damages suffered by Landlord as result of the default, or any sum that Landlord may be required to incur by reason of the default. Upon demand, Tenant shall deposit with Landlord the amount so applied so that Landlord will have the full deposit on hand at all times during the Term or Renewal Term. If Tenant has fully complied with all of its obligations under this Lease through the first five (5) years of the Term, Landlord will remit to Tenant any balance of the security deposit, without interest, within thirty (30) days after the expiration of the first five (5) years of the Term.

ARTICLE 5. SECURITY INTEREST

To secure the performance of Tenant's obligations under this Lease, including without limitation the obligations to pay rent and other sums to be paid by Tenant, Tenant grants to Landlord a security interest in the following collateral: ("Collateral"): (1) all security deposits or other monies owing from Landlord to Tenant (as collateral in the possession of the secured party); (2) all insurance proceeds from any policy insuring the Property or improvements thereon against environmental contamination or pollution; (3) all compensation payable to Tenant as a result of eminent domain proceedings or a transfer in lieu thereof; and (4) all rents from Tenant's subletting of all or a part of the Property. Said lien and security interest will be in addition to Landlord's liens provided by law.

This Lease constitutes a security agreement under the Uniform Commercial Code as enacted in Alaska ("UCC"), and Landlord will have all rights and remedies of a secured party under the UCC regarding the Collateral. Tenant shall execute such financing statements and other instruments as Landlord may now or hereafter reasonably request to evidence the security interest granted by Tenant.

ARTICLE 6. USE AND IMPROVEMENT OF PROPERTY

6.01 Use of Property. Tenant currently occupies the Property, and has made improvements thereon pursuant to a preceding lease agreement. During the Term of this Lease, Tenant shall not use or improve the Property in a manner inconsistent with the proposed use of property described in the lease for the Property between Landlord and Tenant preceding this Lease, without first acquiring the written consent of Landlord, which consent Landlord may withhold in its sole discretion.

6.02 Construction Prerequisites. In the event that Tenant undertakes any construction on the Property during the Term of this Lease, Tenant may not commence any construction on the Property without first satisfying the following conditions:

(a) Not less than thirty (30) days before commencing construction, Tenant shall submit to Landlord preliminary plans and specifications, and an application for a City of Homer zoning permit, for the construction, showing the layout of proposed buildings and other improvements, ingress and egress, dimensions and locations of utilities, drainage plans, and any other information required for the zoning permit or other required permits. The preliminary plans and specifications are subject to Landlord's approval, which will not be unreasonably withheld. Landlord shall communicate approval or disapproval in the manner provided for notices, accompanying any disapproval with a statement of the grounds therefor. Tenant shall be responsible for complying with all laws governing the construction, notwithstanding Landlord's approval of preliminary plans and specifications under this paragraph.

(b) Not less than fifteen (15) days before commencing construction, Tenant shall deliver to Landlord one complete set of final working plans and specifications as approved by the governmental agencies whose approval is required for Tenant to commence construction. The final working plans and specifications shall conform substantially to the preliminary plans and specifications previously approved by Landlord, subject to changes made to comply with suggestions, requests or requirements of a governmental agency or official in connection with the application for permit or approval.

(c) Not less than five (5) days before commencing construction, Tenant shall give Landlord written notice of its intent to commence construction, and furnish to Landlord the following:

(1) Proof that all applicable federal, state and local permits required for the construction have been obtained.

(2) For approved construction, or alteration or restoration of existing or new improvements, a current certificate of insurance with the coverages specified in Section 9.04(c).

6.03 Additional and Replacement Improvements.

(a) Construction of improvements that are not consistent with terms of this Lease is prohibited unless the improvements are authorized by an amendment to this Lease approved by the Council.

(b) Subject to Section 6.03(a), upon satisfying the conditions in section 6.02, Tenant at any time may, but is not obligated to, construct new improvements on the Property and demolish, remove, replace, alter, relocate, reconstruct or add to existing improvements; provided that Tenant is not then in default under this Lease and provided further that Tenant continuously maintains on the Property the existing improvements, or their equivalent of equal or greater value. Once any work is begun, Tenant shall with reasonable diligence prosecute to Completion all construction of improvements, additions, alterations, or other work. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

6.04 As-Built Survey. Within thirty (30) days after Completion of construction of any improvements on the Property involving construction, alteration, addition, removal or demolition of the foundation, structure, utility services, ingress and egress, or any major changes of all or any

part of any structure or improvement on the Property, Tenant shall provide Landlord with three copies of an as-built survey of the Property prepared by a registered professional surveyor, showing the location of all improvements on the Property, including underground utilities, pipelines and pre-existing improvements. Tenant shall accompany the as-built survey with a description of all changes from the approved plans or specifications made during the course of the work.

6.05 Ownership of Improvements. Any and all buildings, fixtures and improvements of any nature whatsoever constructed or maintained on the Property by Tenant will be and remain the property of Tenant at all times during the Term and any Extended Terms and may be removed or replaced by Tenant, subject, however, to the designation of improvements pursuant to the proposed use of the Property described in the preceding lease agreement, for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term as provided in Section 6.06(a).

6.06 Disposition of Improvements at End of Term.

(a) One year before the expiration of the Term or Extended Term, the Landlord and Tenant shall determine if the improvements designated in the Proposed Use of the Property described in the preceding lease agreement are structurally sound and in good working condition, or whether they are eligible for transfer to Landlord and retention on the Property at the expiration of the Term or Extended Term. If the improvements are eligible to remain, Tenant shall leave such improvements intact with all components – including without limitation doors, windows, plumbing, electrical systems, and mechanical fixtures – in good condition and ready for use at occupancy. Tenant shall execute, acknowledge, and deliver to Landlord a proper instrument in writing, releasing and quitclaiming to Landlord all of Tenant's interest in such improvements. If the improvements are ineligible, Tenant shall remove all improvements constructed by Tenant or other occupants of the Property under this Lease before expiration of the Term or Extended Term.

(b) Tenant shall notify Landlord before commencing the removal of an improvement as required under Section 6.06(a), and coordinate the removal work with Landlord. Once Tenant commences the removal work, Tenant shall prosecute the removal with reasonable diligence to Completion and shall repair all damages to the Property caused by such removal no later than the expiration of the Term or Extended Term. All salvage resulting from such work will belong to Tenant, who is responsible for its removal and lawful disposal.

(c) If Tenant fails to remove any improvements from the Property that Tenant is required to remove under Section 6.06(a), Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

(d) If Landlord terminates this Lease because of a default by Tenant, all improvements on the Property become the property of Landlord, which may use or dispose of them in its sole discretion. If Landlord elects to remove any improvements, Tenant shall pay Landlord the costs that it incurs in removing and disposing of the improvements and repairing damages to the Property caused by such removal.

ARTICLE 7. CARE AND USE OF THE PROPERTY

7.01 Maintenance of the Property. Tenant, at its own cost and expense, shall keep the Property and all buildings and improvements that at any time may be situated thereon in a clean, safe and orderly condition, and in good repair at all times during the Term.

7.02 Repair of Improvements.

(a) Except as provided in Section 7.02(b), in the event any buildings or improvements situated on the Property by Tenant are damaged or destroyed by fire, earthquake, tsunami, or other casualty, Tenant shall at Tenant's expense restore the same to good and tenantable condition or shall remove the same as soon as is reasonably possible, but in no event may the period of restoration exceed eighteen (18) months nor may the period of removal exceed forty-five (45) days.

(b) Unless Tenant is excused from the obligation under this paragraph, if the improvements or any part thereof are damaged or destroyed by fire, earthquake, tsunami, or other casualty, rendering the improvements totally or partially inaccessible or unusable, Tenant shall at Tenant's expense restore the improvements to substantially the same condition as they were in immediately before such damage. Tenant shall not be required to restore the improvements under the following circumstances:

(1) If the cost of repairing or restoring the improvements, net of any available insurance proceeds not reduced by applicable deductibles and coinsurance, exceeds 10% of the replacement cost of the improvements, Tenant may terminate this Lease by giving notice to Landlord of Tenant's election to terminate within fifteen (15) days after determining the restoration cost and replacement cost, and this Lease shall terminate as of the date of such notice.

(2) If the repair or restoration of the improvements would be contrary to law, either party may terminate this Lease immediately by giving notice to the other party.

(3) If any damage or casualty to the improvements occurs within three (3) years before the end of the Term or any Renewal Term, Tenant may, in lieu of restoring or replacing the improvements, terminate this Lease by giving written notice of termination to Landlord within one hundred twenty (120) days after such damage or casualty.

Nothing in this paragraph relieves Tenant of the obligation to surrender the Property upon the expiration or earlier termination of the Term in the condition required by Section 3.03.

(c) Under no circumstance shall Landlord be under any obligation to use or advance any of its own funds to restore any Required Improvements.

7.03 Nuisances Prohibited. Tenant at all times shall keep the Property in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; junk, abandoned or discarded property, including without limitation vehicles, equipment, machinery or fixtures; and litter, rubbish or trash. Tenant shall not use the Property in any manner that will constitute waste or a nuisance. Landlord, at Tenant's expense and without any liability to Tenant, may remove or

abate any such junk, abandoned or discarded property, litter, rubbish or trash, or nuisance on the Property after fifteen (15) days written notice to Tenant, or after four (4) hours notice to Tenant in writing, by telephone, facsimile or in person if Landlord makes a written finding that such removal or abatement is required to prevent imminent harm to public health, safety or welfare. Tenant shall pay Landlord all the costs of such removal, plus interest at the Default Rate, as additional rent under this Lease. This section does not limit or waive any other remedy available to the City of Homer to abate any nuisance or for the violation of the Homer City Code.

7.04 Compliance with Laws. Tenant's improvement and use of the Property shall comply with all governmental statutes, ordinances, rules and regulations, including without limitation the City of Homer Zoning Code and all applicable building codes, now or hereafter in effect.

7.05 Liens. Except as provided in Article 13, Tenant may not permit any lien, including without limitation a mechanic's or materialman's lien, to be recorded against the Property. If any such lien is recorded against the Property, Tenant shall cause the same to be removed; provided that Tenant may in good faith and at Tenant's own expense contest the validity of any such lien without subjecting the Property to foreclosure, and in the case of a mechanic's or materialman's lien, if Tenant has furnished the bond required in AS 34.35.072 (or any comparable statute hereafter enacted providing for a bond freeing the Property from the effect of such a lien claim). Tenant shall indemnify and hold Landlord harmless from all liability for damages occasioned by any such lien, together with all costs and expenses (including attorneys' fees) incurred by Landlord in negotiating, settling, defending, or otherwise protecting against such lien and shall, in the event of a judgment of foreclosure of the lien, cause the same to be discharged and removed prior to any attempt at execution of such judgment.

7.06 Radio Interference. Upon Landlord's request, Tenant shall discontinue the use on the Property of any source of electromagnetic radiation that interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

7.07 Signs. Tenant may erect signs on the Property that comply with state and local sign laws and ordinances. City Planning Department approval is required prior to the erection of any sign on the Property.

7.08 Garbage Disposal. Tenant shall keep any garbage, trash, rubbish or other refuse in industry standard containers until removed, and cause all garbage, trash, rubbish or other refuse on the Property to be collected and transported to a Kenai Peninsula Borough solid waste facility or transfer station at least once a week. Tenant may not place garbage, trash, rubbish or other refuse from the Property in Landlord's Homer Spit garbage disposal facilities.

7.09 Access Rights of Landlord. Landlord's agents and employees shall have the right, but not the obligation, to enter the Property at all reasonable times to inspect the use and condition of the Property; to serve, post or keep posted any notices required or allowed under the provisions of this Lease, including notices of non-responsibility for liens; and to do any act or thing necessary for the safety or preservation of the Property.

7.10 Fish Dock Use Permit. Before using the City of Homer Fish Dock, Tenant shall obtain a City of Homer Fish Dock Use Permit. Tenant shall continue to have a current Fish Dock Use Permit in force until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date Tenant ceases to use the Fish Dock.

7.11 Terminal Use Permit. Before using City of Homer Docks other than the Fish Dock, Tenant shall obtain a City of Homer Terminal Use Permit. Tenant shall continue to have a current Terminal Use Permit in force until the earlier to occur of (i) the expiration or earlier termination of the Term and any Extended Term, and (ii) the date Tenant ceases to use City of Homer Docks other than the Fish Dock.

ARTICLE 8. ASSIGNMENT AND SUBLEASE

8.01 Consent Required for Assignment or Sublease. Tenant shall not assign or sublease its interest in this Lease or in the Property without first obtaining the written consent of the Council, which will not be withheld unreasonably. Any assignment or sublease without the consent of the Council will be voidable and, at Landlord's election, will constitute a default. Tenant shall request consent of the Council in writing at least thirty (30) days prior to the effective date of the proposed assignment or sublease, accompanied by a copy of the proposed assignment or sublease. Tenant shall be assessed additional rent, equal to 10% of the current Base Rent for the subleased area, but not upon a sublease of space within a building or other structure on the Property. No consent to any assignment or sublease waives Tenant's obligation to obtain Landlord's consent to any subsequent assignment or sublease. An assignment of this Lease shall require the assignee to assume the Tenant's obligations hereunder, and shall not release Tenant from liability hereunder unless Landlord specifically so provides in writing.

8.02 Events that Constitute an Assignment. If Tenant is a partnership or limited liability company, a withdrawal or change, voluntary, involuntary or by operation of law, of one or more partners or members owning 25% or more of the entity, or the dissolution of the entity, will be deemed an assignment subject to Section 8.01. If Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of 25% of the value of the assets of Tenant, will be deemed an assignment subject to Section 8.01; provided that if Tenant is a corporation the stock of which is traded through an exchange or over the counter, a sale or other transfer of a controlling percentage of the capital stock of Tenant will not constitute an assignment subject to Section 8.01. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 25% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors.

8.03 Costs of Landlord's Consent to be Borne by Tenant. As a condition to Landlord's consent to any assignment or sublease under section 8.01, Tenant shall pay Landlord's reasonable costs, including without limitation attorney's fees and the expenses of due diligence inquiries, incurred in connection with any request by Tenant for Landlord's consent to the assignment or sublease.

ARTICLE 9. LIABILITY, INDEMNITY AND INSURANCE

9.01 Limitation of Landlord Liability. Landlord, its officers and employees shall not be liable to Tenant for any damage to the Property or the buildings and improvements thereon, or for death or injury of any person or damage to any property, from any cause; however, this provision shall not affect the liability of Landlord, its officers and employees on any claim to the extent the claim arises from their negligence or willful misconduct.

9.02 Indemnity Generally. Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from all claims arising from death or injury of any person or damage to any property occurring in or about the Property; however, this provision shall not apply to any claim to the extent the claim arises from the sole negligence or willful misconduct of Landlord, its officers and employees.

9.03 Indemnity for Emergency Service Costs. Without limiting the generality of Section 9.02, in the event of a major fire or other emergency, Tenant shall reimburse Landlord for the cost of providing fire fighting and other emergency service to Tenant, the Property or at any other location where the fire or emergency requiring response arises from or is related to the use of the Property or Tenant's operations. For purposes of this section, a major fire or other emergency is one that requires more than five (5) hours of effort by the City of Homer Fire Department.

9.04 Insurance Requirements.

(a) Without limiting Tenant's obligations to indemnify under this Lease, Tenant at its own expense shall maintain in force such policies of insurance with a carrier or carriers reasonably satisfactory to Landlord and authorized to conduct business in the state of Alaska, as Landlord may reasonably determine are required to protect Landlord from liability arising from Tenant's activities under this Lease. Landlord's insurance requirements shall specify the minimum acceptable coverage and limits, and if Tenant's policy contains broader coverage or higher limits, Landlord shall be entitled to such coverage to the extent of such higher limits.

(b) Tenant shall maintain in force at all times during the Term the following policies of insurance:

(1) Comprehensive general liability insurance with limits of liability not less than a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence and \$2,000,000 aggregate. This insurance also shall be endorsed to provide contractual liability insuring Tenant's obligations to indemnify under this Lease.

(2) Comprehensive automobile liability covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

(3) Workers' compensation insurance as required by AS 23.30.045. This coverage shall include employer's liability protection not less than \$1,000,000 per person, \$1,000,000 per occurrence. Where applicable, coverage for all federal acts (i.e. U.S. Longshoremen and Harbor

Worker's Compensation and Jones Acts) shall also be included. The workers' compensation insurance shall contain a waiver of subrogation clause in favor of Landlord.

(4) Based on the authorized uses of the Property stated in Section 6.01, environmental insurance is not required. However, if Tenant uses the Property, with or without authorization from the Landlord, for purposes other than those stated in paragraph Section 6.01, if Landlord so elects, and within 10 days after Landlord gives notice of such election, Tenant shall procure and at all times thereafter maintain, at its expense, environmental remediation and environmental impairment liability, including sudden and accidental coverage, gradual pollution coverage, and clean-up cost coverage associated with any activity by Tenant or others on, from, or related to the Property, with coverage limits not less than \$1,000,000 for any one accident or occurrence. Coverage shall extend to loss arising as a result of the work or services or products furnished, used or handled in connection with Tenant's operations contemplated under this Lease.

(5) Property insurance covering the improvements previously made by Tenant pursuant to the preceding lease and improvements subsequently constructed pursuant to Section 6.03, if any, in an amount not less than full replacement cost of the improvements.

(c) During construction of any new improvements and during any subsequent alteration or restoration of the existing or any new improvements at a cost in excess of \$250,000 per job, Tenant shall maintain builder's risk insurance in an amount equal to the completed value of the project.

(d) Tenant shall furnish Landlord with certificates evidencing the required insurance not later than the date as of which this Lease requires the insurance to be in effect. The certificates of insurance shall be attached hereto as Exhibit D. Tenant shall not allow the policies to be canceled or expire, or the limits of liability to be reduced, without first giving at least thirty (30) days' prior written notice to Landlord. Landlord shall be named as an additional insured under all policies of liability insurance required of Tenant. Landlord's acceptance of a deficient certificate of insurance does not waive any insurance requirement in this Lease. Tenant also shall grant Landlord permission to obtain copies of insurance policies from all insurers providing required coverage to Tenant by executing and delivering to Landlord such authorizations substantially in the form of Exhibit E as Landlord may request.

ARTICLE 10. ENVIRONMENTAL MATTERS

10.01 Use of Hazardous Substances. Tenant shall not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process any Hazardous Substance, except as is necessary or useful to Tenant's authorized uses of the Property stated in Section 6.01, and only in compliance with all applicable Environmental Laws. Any Hazardous Substance permitted on the Property as provided in this section, and all containers therefor, shall be handled, used, kept, stored and disposed of in a manner that complies with all applicable Environmental Laws, and handled only by properly trained personnel.

10.02 Prevention of Releases. Tenant shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Tenant or any of its agents, employees, contractors, tenants, subtenants, invitees or other users or occupants of the Property, a release of any Hazardous Substance onto the Property or onto any other property.

10.03 Compliance with Environmental Laws. Tenant at all times and in all respects shall comply, and will use its best efforts to cause all tenants, subtenants and other users and occupants of the Property to comply, with all Environmental Laws, including without limitation the duty to undertake the following specific actions: (i) Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of, any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including without limitation permits required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Property; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, all Hazardous Substances from or on the Property to be treated and/or disposed of by Tenant will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

10.04 Notice. Tenant shall promptly give Landlord (i) written notice and a copy of any notice or correspondence it receives from any federal, state or other government agency regarding Hazardous Substances on the Property or Hazardous Substances which affect or will affect the Property; (ii) written notice of any knowledge or information Tenant obtains regarding Hazardous Substances or losses incurred or expected to be incurred by Tenant or any government agency to study, assess, contain or remove any Hazardous Substances on or near the Property, and (iii) written notice of any knowledge or information Tenant obtains regarding the release or discovery of Hazardous Substances on the Property.

10.05 Remedial Action. If the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property of any Hazardous Substance (i) gives rise to liability (including but not limited to a response action, remedial action or removal action) under any Environmental Law, (ii) causes a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Tenant shall, at its sole expense, promptly take any and all remedial and removal action necessary to clean up the Property and mitigate exposure to liability arising from the Hazardous Substance, whether or not required by law.

10.06 Indemnification. Subject to Section 10.09, Tenant shall indemnify, defend, and hold harmless Landlord, its officers and employees from and against any and all claims, disbursements, demands, damages (including but not limited to consequential, indirect or punitive damages), losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including experts', consultants' and attorneys' fees and expenses, and including without limitation remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs), imposed against Landlord, arising directly or indirectly from or out of, or in any way connected with (i) the failure of Tenant to comply with its obligations under this Article; (ii) any activities on the Property during Tenant's past, present or future possession or control of the Property which directly or indirectly resulted in the Property being contaminated with Hazardous Substances; (iii) the discovery of Hazardous Substances on the Property whose presence was caused during the possession or control of the Property by Tenant; (iv) the clean-up of Hazardous Substances on the Property; and (v) any injury or harm of any type to any person or damage to any

property arising out of or relating to Hazardous Substances on the Property or from the Property on any other property. The liabilities, losses, claims, damages, and expenses for which Landlord is indemnified under this section shall be reimbursable to Landlord as and when the obligation of Landlord to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Tenant shall pay such liability, losses, claims, damages and expenses to Landlord as so incurred within ten (10) days after notice from Landlord itemizing in reasonable detail the amounts incurred (provided that no itemization of costs and expenses of counsel to Landlord is required where, in the determination of Landlord, such itemization could be deemed a waiver of attorney-client privilege).

10.07 Survival of Obligations. The obligations of Tenant in this Article, including without limitation the indemnity provided for in Section 10.06, are separate and distinct obligations from Tenant's obligations otherwise provided for herein and shall continue in effect after the expiration of the Term and any Renewal Term.

10.08 Claims against Third Parties. Nothing in this Article shall prejudice or impair the rights or claims of Tenant against any person other than Landlord with respect to the presence of Hazardous Substances as set forth above.

10.09 Extent of Tenant's Obligations. Tenant's obligations under this Article apply only to acts, omissions or conditions that (i) occur in whole or in part during the Term or any Extended Term or during any time of Tenant's possession or occupancy of the Property prior to or after the Term of this Lease; or (ii) are proximately caused in whole or in part by the occupancy of, use of, operations on, or actions on or arising out of the Property by Tenant or its employees, agents, customers, invitees or contractors.

10.10 Inspection at Expiration of Term. Within ninety (90) days before the expiration of the Term or final Extended Term, Tenant shall at its own expense obtain a Phase I environmental inspection of the Property, and conduct any further inspection, including without limitation test holes, that is indicated by the results of the Phase I inspection. Tenant, at its own expense, shall remediate any contamination of the Property that is revealed by the inspections and that is Tenant's responsibility under this Article.

ARTICLE 11. CONDEMNATION

11.01 Article Determines Parties' Rights and Obligations. If any entity having the power of eminent domain exercises that power to condemn the Property, or any part thereof or interest therein, or acquires the Property, or any part thereof or interest therein by a sale or transfer in lieu of condemnation, the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer upon this Lease will be as provided in this Article.

11.02 Total Taking. If all of the Property is taken or so transferred, this Lease and all of Tenant's interest thereunder will terminate on the date title to the Property vests in the condemning authority.

11.03 Partial Taking. If the taking or transfer of part of the Property causes the remainder of the Property to be not effectively and practicably usable in the opinion of the Tenant for the purpose of operation thereon of Tenant's business, this Lease and all of Tenant's interest thereunder will terminate on the date title to the Property vests in the condemning authority. If the taking or transfer of part of the Property leaves the remainder of the Property effectively and practicably usable in the opinion of Tenant for the operation of Tenant's business, this Lease and all of Tenant's interest thereunder will terminate as to the portion of the Property so taken or transferred on the date title to the Property vests in the condemning authority, but will continue in full force and effect as to the portion of the Property not so taken or transferred, and the Base Rent will abate in the proportion that the portion of the Property taken bears to all of the Property.

11.04 Compensation. Landlord and Tenant each may make a claim against the condemning or taking authority for the amount of just compensation due to it. Tenant shall make no claim against Landlord for damages for termination of the leasehold or interference with Tenant's business, even if Landlord is the condemning or taking authority. Neither Tenant nor Landlord will have any rights in or to any award made to the other by the condemning authority; provided, that if a single award to Landlord includes specific damages for loss of Tenant's leasehold interest separately awarded in the eminent domain proceeding and not as a part of the damages recoverable by Landlord, Landlord will transmit such separately awarded damages to Tenant.

ARTICLE 12. DEFAULT

12.01 Events of Default. Each of the following shall constitute an event of default under this Lease:

(a) The failure of Tenant to pay rent or any other sum of money due under this Lease within ten (10) days after the due date.

(b) The failure of Tenant to perform or observe any covenant or condition of this Lease, other than a default in the payment of money described in Section 12.01(a), which is not cured within thirty (30) days after notice thereof from Landlord to Tenant, unless the default is of a kind that cannot be cured within such thirty (30) day period, in which case no event of default shall be declared so long as Tenant shall commence the curing of the default within such thirty (30) day period and thereafter shall diligently and continuously prosecute the curing of same.

(c) The use of the Property or buildings and improvements thereon for purposes other than those permitted herein, to which Landlord has not given its written consent.

(d) The commencement of a case under any chapter of the federal Bankruptcy Code by or against Tenant, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant as bankrupt or insolvent, or the reorganization of Tenant, or an arrangement by Tenant with its creditors, unless the petition is filed or case commenced by a party other than Tenant and is withdrawn or dismissed within ninety (90) days after the date of its filing.

(e) The admission in writing by Tenant of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of Tenant, unless such

appointment shall be vacated within ten (10) days after its entry; Tenant making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of Tenant.

12.02 Landlord's Remedies. Upon the occurrence of an event default, Landlord has all of the following remedies, all in addition to any other remedies that Landlord may have at law or in equity:

(a) Terminate this lease by written notice to Tenant, upon which Tenant shall surrender possession and vacate the Property immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Property in such event with or without process of law and to repossess Landlord of the Property and to expel or remove Tenant and any others who may be occupying or within the Property and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law.

(b) By written notice declare Tenant's right to possession of the Property terminated without terminating this Lease, upon which Landlord will have all the rights to repossess the Property and remove Tenant and Tenant's property that are described Section 12.02(a).

(c) Subject to Section 12.01(e), relet the Property in whole or in part for any period equal to or greater or less than the remainder of the Term or Extended Term, as applicable, for any sum that Landlord may deem reasonable.

(d) Collect any and all rents due or to become due from subtenants or other occupants of the Property.

(e) Landlord may recover from Tenant, with or without terminating this Lease, actual attorney's fees and other expenses incurred by Landlord by reason of Tenant's default and elect to recover damages described under either (1) or (2):

(1) from time to time, an amount equal to the sum of all Base Rent and other sums that have become due and remain unpaid, less the rent, if any, collected by Landlord on reletting the Property reduced by the amount of all expenses incurred by Landlord in connection with reletting the Property; or

(2) immediately upon Tenant's default, an amount equal to the difference between the Base Rent and the fair rental value of the Property for the remainder of the Term or Renewal Term, discounted to the date of such default at a rate per annum equal to the rate at which Landlord could borrow funds for the same period as of the date of such default.

(f) Reentry or reletting of the Property, or any part thereof, shall not terminate this Lease, unless accompanied by Landlord's written notice of termination to Tenant.

12.03 Assignment of Rents. Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Property, and Landlord, as assignee and attorney-in-fact for Tenant, or a receiver for Tenant

appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease, except that Tenant has the right to collect such rent until the occurrence of an event of default by Tenant.

13. LEASEHOLD MORTGAGES

13.01 Mortgage of Leasehold Interest. Tenant shall have the right at any time, and from time to time, to subject the leasehold estate and any or all of Tenant's improvements situated on the Property to one or more deeds of trust, mortgages, and other collateral security instruments as security for a loan or loans or other obligation of Tenant (each a "Leasehold Mortgage"), subject to the remainder of this Article 13.

13.02 Subordinate to Lease. The Leasehold Mortgage and all rights acquired under it shall be subject and subordinate to all the terms of this Lease, and to all rights and interests of Landlord except as otherwise provided in this Lease.

13.03 Notice to Landlord. Tenant shall give Landlord notice before executing each Leasehold Mortgage, and shall accompany the notice with a true copy of the note and the Leasehold Mortgage as proposed for execution. Upon Landlord's written consent to the Leasehold Mortgage and upon execution of the Leasehold Mortgage by all parties, the mortgagee shall become a Qualified Mortgagee as that term is used in this Lease. Tenant also shall deliver to Landlord a true and correct copy of any notice from a Qualified Mortgagee of default or acceleration of the maturity of the note secured by a Leasehold Mortgage promptly following Tenant's receipt thereof.

13.04 Modification or Termination. No action by Tenant or Landlord to cancel, surrender, or materially modify the economic terms of this Lease or the provisions of Article 11 will be binding upon a Qualified Mortgagee without its prior written consent.

13.05 Notice to Qualified Mortgagee.

(a) If Landlord gives any notice hereunder to Tenant, including without limitation a notice of an event of default, Landlord shall give a copy of the notice to each Qualified Mortgagee at the address previously designated by it.

(b) If a Qualified Mortgagee changes its address or assigns the Leasehold Mortgage, the Qualified Mortgagee or assignee may change the address to which such copies of notices hereunder shall be sent by written notice to Landlord. Landlord will not be bound to recognize any assignment of a Qualified Mortgage unless and until Landlord has been given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, the assignee will be deemed to be the Qualified Mortgagee hereunder with respect to the assigned Leasehold Mortgage.

(c) If a Leasehold Mortgage is held by more than one person, Landlord shall not be required to give notices to the Qualified Mortgagee of the Leasehold Mortgage unless and until all of the holders of the Leasehold Mortgage give Landlord an original executed counterpart of a

foreclosure, the Qualified Mortgagee thereafter may assign or transfer Tenant's leasehold to an assignee upon obtaining Landlord's written consent thereto, and subject to all of the other provisions of Article 8. Upon such acquisition by a Qualified Mortgagee, or its assignee of Tenant's leasehold, Landlord will execute and deliver a new ground lease of the Property to the Qualified Mortgagee or its assignee not later than one hundred twenty (120) days after such party's acquisition of Tenant's leasehold. The new ground lease will be identical in form and content to this Lease, except with respect to the parties thereto, the term thereof (which will be co-extensive with the remaining Term hereof), and the elimination of any requirements that Tenant fulfilled prior thereto, and the new ground lease will have priority equal to the priority of this Lease. Upon execution and delivery of the new ground lease, Landlord will cooperate with the new tenant, at the sole expense of said new tenant, in taking such action as may be necessary to cancel and discharge this Lease and to remove Tenant from the Property.

ARTICLE 14. GENERAL PROVISIONS

14.01 Authority. Tenant represents and warrants that it has complete and unconditional authority to enter into this Lease; this Lease has been duly authorized by Tenant's governing body; this Lease is a binding and enforceable agreement of and against Tenant; and the person executing the Lease on Tenant's behalf is duly and properly authorized to do so.

14.02 Estoppel Certificates. Either party shall at any time and from time to time upon not less than thirty (30) days prior written request by the other party, execute, acknowledge and deliver to such party, or to its designee, a statement in writing certifying that this Lease is in full force and effect and has not been amended (or, if there has been any amendment thereof, that the same is in full force and effect as amended and stating the amendment or amendments); that there are no defaults existing, (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the Base Rent and other charges have been paid in advance. The requesting party shall pay the cost of preparing an estoppel certificate, including the cost of conducting due diligence investigation and attorney's fees.

14.03 Delivery of Notices - Method and Time. All notices, demands or requests from one party to another shall be delivered in person or be sent by (i) mail, certified or registered, postage prepaid, (ii) reputable overnight air courier service, or (iii) electronic mail or facsimile transmission (accompanied by reasonable evidence of receipt of the transmission and with a confirmation copy mailed by first class mail no later than the day after transmission) to the address for the recipient in Section 14.04 and will be deemed to have been given at the time of delivery or, if mailed, three (3) days after the date of mailing.

14.04 Addresses for Notices. All notices, demands and requests from Tenant to Landlord shall be given to Landlord at the following address:

City Manager
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
Facsimile: (907) 235-3148
Email: citymanager@ci.homer.ak.us

written designation of one of their number to receive notices hereunder. Notice given to the one so designated is effective as notice to all them.

13.06 Performance of Tenant Obligations.

(a) A Qualified Mortgagee may perform any obligation of Tenant and remedy any default by Tenant under this Lease within the time periods specified in the Lease, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant; provided, however, that the Qualified Mortgagee will not thereby be subrogated to the rights of Landlord.

(b) Tenant may delegate irrevocably to a Qualified Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation will be binding upon Landlord unless and until either Tenant or the Qualified Mortgagee gives Landlord a true copy of a written instrument effecting such delegation.

(c) If Tenant defaults in the payment of any monetary obligation hereunder, Landlord shall not terminate this Lease unless and until Landlord provides written notice of such default to each Qualified Mortgagee and no Qualified Mortgagee cures such default within ten (10) days after the expiration of any grace or cure periods granted Tenant herein. If Tenant defaults in the performance of any non-monetary obligation hereunder, Landlord shall not terminate this Lease unless and until Landlord provides written notice of such default to each Qualified Mortgagee and no Qualified Mortgagee cures such default within thirty (30) days after the expiration of any grace or cure periods granted Tenant herein.

13.07 Possession by Qualified Mortgagee. A Qualified Mortgagee may take possession of the Property and vest in the interest of Tenant in this Lease upon the performance of the following conditions:

(a) The payment to Landlord of any and all sums due to Landlord under this Lease, including without limitation accrued unpaid rent.

(b) The sending of a written notice to Landlord and Tenant of the Qualified Mortgagee's intent to take possession of the Property and assume the Lease.

(c) The curing of all defaults not remediable by the payment of money within an additional thirty (30) days after the date upon which such default was required to be cured by Tenant under the terms of this Lease.

13.08 No Liability of Mortgagee Without Possession. A Qualified Mortgagee shall have no liability or obligation under this Lease unless and until it sends to Landlord the written notice described in paragraph 13.07(b). Nothing in this Lease or in the taking of possession of the Property and assumption of the Lease by a Qualified Mortgagee or a subsequent assignee shall relieve Tenant of any duty or liability to Landlord under this Lease.

13.09 New Lease. If a Qualified Mortgagee acquires Tenant's leasehold as a result of a judicial or non-judicial foreclosure under a Leasehold Mortgage, or by means of a deed in lieu of

All notices, demands or requests from Landlord to Tenant shall be given to Tenant at the following address:

General Counsel
Icicle Seafoods, Inc.
4019 21st Ave. West
Seattle, Washington 98199
Facsimile: (206) 281-0329
Email: PatH@IcicleSeafoods.com

Each party may, from time to time, designate a different address or different agent for service of process by notice given in conformity with Section 14.03.

14.05 Time of Essence. Time is of the essence of each provision of this Lease.

14.06 Computation of Time. The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a holiday, and then it is also excluded. The term "holiday" will mean all holidays as defined by the statutes of Alaska.

14.07 Interpretation. Each party hereto has been afforded the opportunity to consult with counsel of its choice before entering into this Lease. The language in this Lease shall in all cases be simply construed according to its fair meaning and not for or against either party as the drafter thereof.

14.08 Captions. The captions or headings in this lease are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Lease.

14.09 Independent Contractor Status. Landlord and Tenant are independent contractors under this Lease, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between Landlord and Tenant. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party.

14.10 Parties Interested Herein. Nothing in this Lease, express or implied, is intended or shall be construed to give to any person other than Landlord, Tenant and any Qualified Mortgagee any right, remedy or claim, legal or equitable, under or by reason of this Lease. The covenants, stipulations and agreements contained in this Lease are and shall be for the sole and exclusive benefit of Landlord, Tenant and any Qualified Mortgagee, and their permitted successors and assigns.

14.11 Multi-Party Tenant. If Tenant is comprised of more than one natural person or legal entity, the obligations under this Lease imposed upon Tenant are joint and several obligations of all such persons and entities. All notices, payments, and agreements given or made by, with, or

to any one of such persons or entities will be deemed to have been given or made by, with, or to all of them, unless expressly agreed otherwise by Landlord in writing.

14.12 Broker's Commissions. Each of the parties represents and warrants that there are no claims for brokerage commissions or finders' fees in connection with the execution of this Lease, and agrees to indemnify the other against, and hold it harmless from, all liability arising from any such claim including, without limitation, the cost of counsel fees in connection therewith.

14.13 Successors and Assigns. This Lease shall be binding upon the successors and assigns of Landlord and Tenant, and shall inure to the benefit of the permitted successors and assigns of Landlord and Tenant.

14.14 Waiver. No waiver by a party of any right hereunder may be implied from the party's conduct or failure to act, and neither party may waive any right hereunder except by a writing signed by the party's authorized representative. The lapse of time without giving notice or taking other action does not waive any breach of a provision of this Lease. No waiver of a right on one occasion applies to any different facts or circumstances or to any future events, even if involving similar facts and circumstances. No waiver of any right hereunder constitutes a waiver of any other right hereunder.

14.15 Attorney's Fees.

(a) If Landlord is involuntarily made a party defendant to any litigation concerning this Lease or the Property by reason of any act or omission of Tenant, or if Landlord is made a party to any litigation brought by or against Tenant without any fault on the part of Landlord, then Tenant shall pay the amounts reasonably incurred and expended by Landlord, including the reasonable fees of Landlord's agents and attorneys and all expenses incurred in defense of such litigation.

(b) In the event of litigation between Landlord and Tenant concerning enforcement of any right or obligation under this Lease, the non-prevailing party shall reimburse the prevailing party for the attorney's fees reasonably incurred and expended by the prevailing party in the litigation.

14.16 Severability. If any provision of this Lease shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Lease, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Lease shall remain in full force and effect.

14.17 Entire Agreement, Amendment. This Lease constitutes the entire and integrated agreement between Landlord and Tenant concerning the subject matter hereof, and supersedes all prior negotiations, representations or agreements, either written or oral. No affirmation, representation or warranty relating to the subject matter hereof by any employee, agent or other representative of Landlord shall bind Landlord or be enforceable by Tenant unless specifically set forth in this Lease. This Lease may be amended only by written instrument executed and acknowledged by both Landlord and Tenant.

14.18 Governing Law and Venue. This Lease will be governed by, construed and enforced in accordance with, the laws of the State of Alaska. Any action or suit arising between the parties in relation to or in connection with this Lease, or for the breach thereof, shall be brought in the trial courts of the State of Alaska for the Third Judicial District at Homer.

14.19 Execution in Counterparts. This Lease may be executed in two or more counterparts, each of which shall be an original and all of which together shall constitute one and the same document.

14.20 Prior Lease. Landlord and Tenant acknowledge that they are/were parties to a prior lease of the Property, dated September 14, 1979, a memorandum of which has been recorded in the Homer Recording Office under Document No. 111-884 (the "Prior Lease"). This Lease replaces and supersedes the Prior Lease effective as of the date above, and on and after that date the Prior Lease shall have no force or effect, except that it shall remain in effect as to events, rights, obligations, or remedies arising or accruing under the Prior Lease prior to that date.

[Remainder of page intentionally left blank; signature page to follow.]

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

Landlord:

Tenant:

CITY OF HOMER

ICICLE SEAFOODS, INC.

By: Katie Koester
Katie Koester, City Manager

By: Christopher M. Ruettgers
Christopher M. Ruettgers, CEO
(name/title)

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on January 24, 2017, by Katie Koester, City Manager of the City of Homer, an Alaska municipal corporation, on behalf of the City of Homer.



Melissa Jacobsen
Notary Public in and for Alaska
My Commission Expires: 9-8-20

STATE OF ~~ALASKA~~)
WASHINGTON) ss.
~~THIRD JUDICIAL DISTRICT~~)
COUNTY OF KING)

The foregoing instrument was acknowledged before me on January 26, 2017, by Christopher M. Ruettgers, as CEO (title) of Icicle Seafoods, Inc. on behalf of Icicle Seafoods, Inc.



Shawn Lear Jensen
Notary Public in and for ~~Alaska~~ Washington
My Commission Expires: 10/08/20
Shawn Lear Jensen, Notary Public

EXHIBIT A
SCHEDULE OF OWNERSHIP AND
TENANT'S CERTIFICATE OF GOOD STANDING

Tenant, **ICICLE SEAFOODS, INC.** is a **CORPORATION** organized under the laws of the State of Alaska. Attached to this exhibit is a certificate issued by that state certifying that Tenant is in good standing and describing its legal organization.

The parent corporation of **Icicle Seafoods, Inc.**, and its percentage of ownership is as follows:

Name: Snowflake Acquisition Co., Inc. 100%

**Address: 255 Metcalf Street
St. John, New Brunswick E2K 1K7**

Alaska Entity #64930

State of Alaska
Department of Commerce, Community, and Economic
Development
Corporations, Business, and Professional Licensing

Certificate of Compliance

The undersigned, as Commissioner of Commerce, Community, and Economic Development of the State of Alaska, and custodian of corporation records for said state, hereby issues a Certificate of Compliance for:

ICICLE SEAFOODS, INC.

This entity was formed on January 18, 1985 and is in good standing. This entity has filed all biennial reports and fees due at this time.

No information is available in this office on the financial condition, business activity or practices of this corporation.



IN TESTIMONY WHEREOF, I execute the certificate and affix the Great Seal of the State of Alaska effective December 05, 2016.

Chris Hladick

Chris Hladick
Commissioner

EXHIBIT B

**CONFORMED COPY OF RESOLUTION AUTHORIZING LEASE AND
AUTHORIZING SIGNERS TO SIGN LEASE AGREEMENT ON BEHALF
OF TENANT**

**ACTION BY WRITTEN CONSENT
BY THE SOLE DIRECTOR OF
ICICLE SEAFOODS, INC.
DECEMBER 5, 2016**

The undersigned, the sole director (the "Sole Director") of Icicle Seafoods, Inc., an Alaska corporation (the "Company"), acting without a meeting pursuant to AS 10.06.475 of the Alaska Corporations Code (the "Alaska Code"), hereby waives notice of a special meeting required by the Company's Bylaws or the Alaska Code, and hereby approves, on behalf of the Company, the following recitals and resolutions and consents to the taking of the actions set forth herein:

WHEREAS, the Company has been in negotiations with the City of Homer, Alaska (the "City") for the continued lease of Lot 41, Homer Spit Amended, Plat No. 89-34, Homer Recording District (the "Premises");

WHEREAS, the Company desires to enter into a new lease for the Premises on the terms and conditions of that certain Ground Lease and Security Agreement dated December, 2016, between the City and the Company (the "Lease");

WHEREAS, the Sole Director has deemed it advisable and in the best interests of the Company to enter into the Lease for the Premises; and

WHEREAS, it is the intention and desire of the Sole Director that Christopher Ruetzgers, as Chief Executive Officer of the Company, execute the Lease on behalf of the Company.

NOW THEREFORE, BE IT

RESOLVED, that the Lease, substantially in the form presented to the Sole Director, is approved;

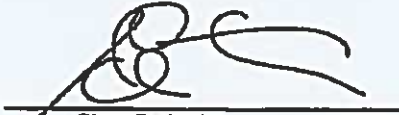
RESOLVED FURTHER, Christopher Ruetzgers, as Chief Executive Officer of the Company, is authorized to execute the Lease on behalf of the Company;

RESOLVED FURTHER, that any action taken by Mr. Ruetzgers as Chief Executive Officer of the Company within the scope of authority granted by the resolutions herein prior to the date hereof is hereby ratified and affirmed in all respects; and

RESOLVED FURTHER, the officers of the Company be, and each of them acting individually hereby is, authorized to execute such additional agreements, instruments, and documents on behalf of the Company, and to take such other and further actions, as in their

judgment are appropriate to effectuate the foregoing resolutions, and that all such acts as they have heretofore taken are hereby ratified and approved.

IN WITNESS WHEREOF, this Resolution is executed as of the date first written above.



Glenn B. Cooks

[Signature page to Icicle Seafoods, Inc. Consent]

EXHIBIT C
LEGAL DESCRIPTION OF PROPERTY
(Section 2.01)

Lot 41, Homer Spit Amended, Plat No. 89-34, Homer Recording District

EXHIBIT E

**PERMISSION TO OBTAIN INSURANCE POLICIES
(Section 9.04(d))**

The City of Homer is hereby granted permission to request and obtain copies of ICICLE SEAFOODS, INC.'s ("Tenant") insurance policies from Tenant's broker and/or insurer, Marsh USA, Inc.. Tenant requests the broker/insurer to provide the City of Homer with information about and copies of all of Tenant's insurance policies providing the type of coverage required by the Lease between Tenant and the City of Homer.

It is understood that the Tenant may revoke this permission at any time by written notice to City of Homer and to Tenant's broker and/or insurer; however, such revocation will constitute a default of Tenant's lease from the City of Homer.

TENANT NAME

Date: January 26, 2017

By: 

Christopher M. Ruettgers (printed name)

CEO (title)

By: _____

_____ (printed name)

_____ (title)

EXHIBIT D
CERTIFICATES OF INSURANCE
(Section 9.04(d))

FIRST AMENDMENT TO LEASE AGREEMENT

This amendment is made and entered into effect as of March 1, 2018 between the CITY OF HOMER, an Alaska municipal corporation ("Landlord") whose address is 491 East Pioneer Avenue, Homer, Alaska 99603, and ICICLE SEAFOODS INC., an Alaska corporation, with its principal offices at 4019 21st Ave. West, Seattle, Washington 98199, ("Tenant"), and amends the Ground Lease Agreement ("LEASE") entered into between Icicle Seafoods, Inc. and the City of Homer on January 24, 2017 recorded Year 2017 Number 000357-0, Homer Recording District 309, Alaska.

Landlord and Tenant agree as follows:

ARTICLE 2. THE PROPERTY: Section One, Subparagraph one of the LEASE is hereby amended to read as follows:

2.01 Lease of Property: Subject to the terms and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the following described property ("Property"):

Lot 41, T 7S R 13W SEC 1 Seward Meridian HM 0890034 HOMER SPIT SUB AMENDED ADL 18009, Homer recording District, State of Alaska, as depicted on Exhibit C, containing 64,905 square feet, more or less, also known as Kenai Peninsula Borough Tax Parcel No. 181-034-19;

Lot 42, T 7S R 13W SEC 1 Seward Meridian HM 0890034 HOMER SPIT AMENDED ADL 18009 LOT 42 (ADL 18009), as depicted on the document described as Homer Spit Amended, a Resubdivision, recorded as Plat 89-34, in the Homer Recording District, on September 21, 1989, containing 64,066 square feet, more or less, also known as Kenai Peninsula Borough tax Parcel No. 181-034-18

The described areas total 128,971 square feet, and are subject, however, to reservations, restrictions, easements and encumbrances of record, and to encroachments that may be revealed by an inspection of the property.

ARTICLE 4. RENT, TAXES, ASSESSMENTS AND UTILITIES: Section 4.01, Subparagraph 1 of the LEASE is hereby amended to include Subparagraph (a) (i) to read as follows:

(a) **Initial Base Rent.** Tenant shall pay to Landlord an initial annual rent of \$35,070.00 ("Base Rent"). Base Rent is payable monthly in advance in installments of \$2922.50, plus tax, on February 1, 2017, and on the first day of each month thereafter, at the office of the City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603-7645, or at such other place as Landlord may designate in writing. All Base rent shall be paid without prior demand or notice and without deduction or offset. Base Rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02

(i) **Amended Base Rent.** In addition, Tenant shall pay to Landlord an initial annual rent of \$31,390.00 ("Base Rent") for Lot 42 as described hereinabove, that is payable monthly in advance in installments of \$ 2615.83 ,plus tax, on the first day of March 1, 2018, and on the first day of each month thereafter.

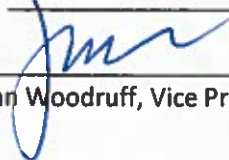
A total annual rent, comprised of the two base rents referenced above, of \$ 66460.00 ("Base Rent") shall be calculated. This adjusted Annual Rent shall be understood as the new "Base Rent" as defined above and throughout the contract. The newly combined monthly total is payable in advance in installments of \$ 5538.33, plus tax, on March 1, 2018, and on the first day of each month thereafter. All Base Rent shall be paid without prior demand or notice and without deduction or offset. Base rent that is not paid on or before the due date will bear interest at the Default Rate. Base Rent is subject to adjustment as provided in Section 4.02.

Landlord:
City of Homer

Tenant:
ICICLE SEAFOODS INC

By: _____

Katie Koester, City Manager

By: _____

John Woodruff, Vice President

ACKNOWLEDGMENTS

STATE OF ALASKA)
) SS.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on March 14, 2018 by Katie Koester, City Manager of the City of Homer, an Alaska municipal corporation, on behalf of the City of Homer.



Notary Public in and for Alaska

Signature: Dotti J. Harness

My Commission Expires: with position

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that John Woodruff is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Vice President of Icicle Seafoods, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: March 1, 2018

Signature: [Signature]
Shawn Lear Jensen, Notary Public

My appointment expires: 10/08/2020

After recording return to:
Melissa Jacobsen, MMC, City Clerk
City of Homer
491 E. Pioneer Avenue
Homer, AK 99603